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OFFICE OF PETITIONS

In re Application of :
Thomas L. Barnhart et al. :
Application No. 10/681,587 : DECISION ON PETITION
Filed: October 7, 2003 :
Attorney Docket No. 170707-1016 :
:

This is a decision on the petition filed February 11, 2009, requesting under 37 CFR 1.182 that the acceptance of the terminal disclaimer filed July 31, 2007 be withdrawn. The \$400 petition fee has been received.

The petition is granted.

Petitioners assert (in comments presented in an amendment filed concurrent with this petition), that it was discovered that the reference, US patent no. 6,629,888, which was applied in the obvious double patenting rejection was not commonly owned with the instant application. A review of the file shows that the double patenting rejection set forth in the November 22, 2006 non-final Office action was, in fact, a statutory double patenting rejection under 35 USC 101. This is NOT an obviousness type double patenting rejection and the Office action clearly indicated that the filing of a terminal disclaimer cannot overcome this rejection. Therefore, the terminal disclaimer is not and was not needed. Accordingly the terminal disclaimer is withdrawn. USPTO records for the above identified application have been changed consistent with this decision.

Telephone inquiries related to this decision should be addressed to Carl Friedman at (571) -272-6842.



David Bucci
Petitions Examiner
Office of Petitions